

ADMINISTRATIVE - INTERNAL USE ONLY

INSPECTOR GENERAL
78-514

~~DRAFT~~ - 10 Mar 78

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MEMORANDUM FOR: Office of Legislative Counsel

78-0399/26

FROM : John H. Waller
Inspector General

SUBJECT : Title IV Issues

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Attached are comments on Title IV of S2525 as requested in
NFAC-729-78.

Attachment

John H. Waller

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Comments on Title IV (CIA) of S2524

A. Issue keyed to the numbered issues in the OGC paper.

1. Counterterrorist Activities

CIA has certain valuable and unique capabilities which are applicable to counterterrorist activities as well as the collection of intelligence on international terrorism. While CIA should have the authority to collect counterterrorist intelligence and to coordinate the collection of intelligence on international terrorists abroad, it might be more appropriate for other agencies (such as the FBI in the U.S. and State Department abroad) to coordinate U.S. counterterrorist activities.

2. NSC Control of CIA

The original language of the 1947 act is preferred. Otherwise there is confusion as to whether the NSC would exercise the same degree of control and direction of CIA, if the Director of CIA were other than the DNI -- per Section 117, as it would for the DNI who is "under the direction and control" also of the NSC (Sec 114(a)).

3. Proprietaries

There is no need for a special definition of "proprietary" in Section 403(b) if the word "covert" is inserted in front of "proprietary" where appropriate in this Title.

4. DNI/DCI

Section 114(d) provides for the DNI to head the CIA. Suggest that Section 117 be deleted and Section 412(a) be reworded to read:

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"The Director of National Intelligence shall serve as the Director of the Central Intelligence Agency (hereinafter in this title referred to as the "Director.")"

Further, Section 114(d) should be reworded as:

"(d) The Director of National Intelligence shall serve as the Director of the Central Intelligence Agency and is the head of the Office of the Director of National Intelligence."

This would be consistent with the organizational pattern set down in Section 104(16)(A) and (B).

5. Inherent Delegable Powers

This does not stand out clearly as a separate issue and might well be combined with 4. above.

6. and 7. Collection of Foreign Intelligence

Section 413(b)(1) and (2) are badly worded and would appear to exclude proper clandestine collection of information in the U.S. from U.S. persons in the U.S. Suggest that these subsections be reworded to conform to Sections 1-801 and 1-803 of E.O. 12036.

8. Intelligence Support to Congress

The preamble to Section 3-4 of E.O. 12036 on reporting to Congressional committees recognizes the Constitutional aspects and the role of the President and the DCI of any requirement to provide information on intelligence activities to Congress. Further Section 1-601(c) instructs the DCI to "facilitate the use of national foreign intelligence products by the Congress in a secure manner" and

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Section 1-802 instructs CIA to "produce and disseminate foreign intelligence....to meet the needs of the President, the NSC, and other elements of the United States Government." We understand that these provisions of E.O. 12036 were concurred in by the appropriate Congressional committees and recognize the need to support Congress with national intelligence and the doctrine of separation of powers. Any statutory requirement, such as is in Section 413(f) of S2525, for the Agency to provide intelligence to Congress should have caveats similar to those in E.O. 12036 cited above.

9. CIA as the DNI's "Agent"

The alternative language should be adopted and the argument coupled with those in paragraph 4 above.

10. Services of Common Concern

These should be as directed by the NSC since they can have a departmental impact beyond that of the Intelligence Community organizations directly concerned.

11. Liaison with Foreign Governments

Suggest that the second alternative Section 413(g)(2) be adopted, modified to read "foreign intelligence and security services" instead of "foreign governmental agencies". This would conform to the language in Section 1-601(g) of E.O. 12036.

12. Office of the Director of National Intelligence

a. There is no need to define this term in Section 413(g)(5) as this is covered by the reference in Section 403(a) to the

definition in Title I, Section 104(16)(A) and Section 113(a).

b. A key feature of S2525 would be the statutory separation of the DNI and the Office of the DNI from the CIA and the corresponding split in authorities and responsibilities. It is doubtful that the DNI could carry out some of the responsibilities (such as coordination of intelligence abroad or production of national intelligence) in Section 114 of Title I without either having CIA carrying them out or transferring elements of CIA to the Office of the DNI. The responsibilities assigned to CIA in Sections 412, 413 and 414 should be compared with the one assigned to the DNI in Section 114 of Title I. In any event, Section 117 of Title I should be deleted as this only compounds the ambiguities in the respective roles of the DNI and D/CIA in this Act.

13. Support to O/DNI

"Inspection" should be added to the list of CIA services to the O/DNI in Section 413(g)(5). The DCI recently decided to place the responsibility for inspection and audit services for the Office of the DCI with the CIA Inspector General.

14. Coordination with the FBI

Concur in the replacement of Section 413(h)(1) with the proposed E.O. 12036 language.

15. Annual Attorney General/DNI Review

Recommend that Section 413(h)(2) be deleted as redundant with other review and oversight requirements.

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16. Administrative and Technical Support Functions

Concur that the proposed Section be added to Section 413.

17. DNI Certification on Transfer of Funds

No comment on this issue.

18. Investigation of Employees and Contractors

Section 421(a)(6) should be rewritten to conform to Section 1-811 of E.O. 12036.

19. Authority for Certain Services

It is not clear why these functions, which are inherent in the functioning of most departments and agencies, need to be specified in legislation. Suggest that Section 421(a)(8) be deleted.

20. Agency Payment of Dues

Adequately covered in Section 422(a).

21. Dispersal of Property

Concur with the proposed addition.

22. Normal Covert Proprietary Funds

Suggest that the word "normal" be deleted as having no meaning in this context.

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23. Disclosure of Agency Budget

Section 421(g) should include "Agency Budget".

24. Firearms Authority

Section 421(h) should extend this authority to the protection of Agency installations, valuable property, classified information, and authorized training. The term "inexigent circumstances" should be deleted as unnecessary.

25. Personnel Authorities

a. It is not clear that the last phrase in Section 421(j)(1) and all of Section 421(j)(3) are consistent and authorize Agency EP positions for other than the Director, General Counsel, or Inspector General above the EP V level. There is no provision for a Deputy Director of CIA in these sections or in Section 412.

b. In subsection 421(j)(2), suggest that "of the national security" be deleted consistent with Section 403(c) of the 1947 Act. The Director should have a wider authority to terminate employment than the criteria of "national security" would allow.

26. and 27. Procurement Authority

No comments on these sections.

28. Provision of Expert Personnel

There is no reason to limit the provision (on exchange) of expert personnel within the Intelligence Community to "exigent circumstances". Suggest that this term be deleted.

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29. INS/IRS Requests

Concur in proposed revision of Section 423(4) and (5).

30. and 31. Lawful Functions

Agree that the use of "lawful" in Section 425(a) is gratuitous and not necessary. The proposed authorization "for activities of and extraordinary nature, not otherwise authorized by this Act" seems excessively broad and may raise public and congressional concern that the Agency intends, or could be directed, to engage in activities wholly outside its normal scope. Extraordinary or emergency expenditure authority should be clearly limited to unforeseen requirements wherein the general scope of the Agency's charter.

32. Congressional Reporting

I do not see that Section 425(b) assumes a split between the positions of DNI and D/CIA. There is no difference between the present language of the second sentence and the proposed change except that you have omitted reporting to the HPSCI. The original language should be acceptable.

33. and 34. OMB Approval and Congressional Reporting of Reserve Fund Expenditures

The terms "proposed expenditure" and "facts and circumstances" are likely to be interpreted as requiring explanation of Reserve Fund withdrawals or expenditures. If OMB approval or Congressional notification is to be required at all, it would be difficult to limit such reporting to minimal facts.

35. Senate Confirmation of the General Counsel

This should be resisted as a step toward politicizing this position.

36. Inspector General and General Counsel and the O/DNI

" and the Office of the Director of National Intelligence" should be inserted after "Agency" in Sections 426(a)(1), (2), and (3); and 426(b)(1) and (4). This is consistent with Section 413(g)(5) and item no. 13 above. In any event, Section 151 in Title I assumes that there will be a General Counsel and an Inspector General for O/DNI.

37. Disposal of Proprietaries

No comment.

38. Use of the CIA Seal

This section appears to be sufficient.

39. Disclosure of Secret Agent Identity

Concur with the proposed alternative language.

40. Police Powers

The last clause of Section 432(b) provides the necessary authority.

41. Definition of Employee

Alternative "a" would seem to be appropriate.

42. Employee Allowances

Agree with proposed changes.

43. 60 Day Delay in Executive Order

The need for Section 441(c)(3) is not evident.

44. Payment of Expenses, Benefits and Allowances

Creating of equivalent benefits, etc., not specifically authorized by Foreign Service regulations should be within the Director's authority. Adding: "cannot or" before "should not" in line 5 on page 208 should provide sufficient authority.

45. CIARDS

Section 442 should be deleted. There is no need to rewrite existing statutes granting authority which already exists.

B. General Comments

1. Title IV, like the other titles in this Act, is greatly overwritten, overspecific to the point where there is doubt as to the authority for any function or activity not mentioned, but inherent in the general authorities and responsibilities of this Agency or any department or agency of government. For example, once the Agency has been granted the authority to conduct foreign intelligence activities and special activities, there is no need to specify in statute the technique or means by which the Agency should carry out its mission (such as authority to establish proprietaries, disseminate reports, conduct liaison with foreign governments, or conduct liaison with foreign governments, or conduct audits of its activities) unless there is a need to grant a specific exemption from the requirements of another statute or to provide a unique authority. Such specificity would appear to deny to the Agency the application of techniques and functions, otherwise lawful, unless they were specified in this Title.

2. There is no need to specify in this Title, authorities contained in other statutes, such as CIARDs.
3. The authorities given to CIA in Section 1-8 of E.O. 12036 were, I understand, agreed to by the SSCI and HPSCI. They should replace the poorly drafted authorities in this Title.
4. There should be a provision in this Title for the relaxation of administrative restrictions and procedures in wartime. If other statutes provide wartime authorities for the President in the Agency, they should be referenced in this Title.
5. There should be a provision in Section 431(c) that would protect the names of agents, as well as officers and employees of the Agency from unauthorized disclosure. Suggest that "or agent" be inserted in line 14 on page 203 after "employee..."